

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA DEPARTMENT OF JUSTICE, OFFICE OF CONSUMER ADVOCATE,</p> <p style="text-align:right">Complainant,</p> <p style="text-align:center">v.</p> <p>AMERICA'S TELE-NETWORK CORP. and JOHN W. LITTLE, President of America's Tele-Network Corp.,</p> <p style="text-align:right">Respondents</p>	<p style="text-align:right">DOCKET NO. FCU-00-6</p>
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**ORDER REGARDING MOTION TO WITHDRAW**

(Issued April 16, 2001)

On March 19, 2001, Kirk Salzmman and Jacques D. Schira, attorneys for America's Tele-Network, Corp. and John W. Little (AT-N), (the Petitioners), filed a Motion to Withdraw Appearance and Representation as Counsel. In support of the motion, the Petitioners stated they had learned AT-N's telephone and facsimile lines had been disconnected preventing direct communication, that AT-N had failed to respond to electronic messages (e-mail) and had failed to provide client authorization as well as the needed involvement in the preparation of its defense. The Petitioners further stated that on March 9, 2001, AT-N was given reasonable notice that

Petitioners could be forced to withdraw their representation in this matter based on AT-N's unresponsiveness, and attached a copy of the March 9, 2001 letter they had sent to their clients along with a copy of the return receipt card. The return receipt card is unsigned by AT-N.

Petitioners stated that AT-N's "unresponsiveness, lack of attention and inability to substantially fulfill its obligations to Petitioners has made it unreasonably difficult for Petitioners to carry out the duties of their employment and justifies withdrawal pursuant to Iowa Code of Professional Responsibility DR2-110(c)(1)." They requested that the Board issue an order permitting them to withdraw from further representation of AT-N and John W. Little. Mr. Salzmann's sworn statement attached to the motion stated that AT-N and John W. Little "have refused to cooperate with us and have been unresponsive to counsel inquiries making it unreasonably difficult for us to carry out our duties as counsel." He further stated that reasonable notice of their intent to seek Board permission to withdraw, if cooperation could not be secured, was given to AT-N and John W. Little via certified letter dated March 9, 2001. The certificate of service attached to the Motion shows it was served on AT-N by certified mail.

On March 26, 2001, the Petitioners filed a Statement that stated counsel was unable to comply with the filing deadlines contained in the February 26, 2001 Order because "Counsel has been unable to obtain the required information, cooperation and authorization from America's Tele-Network or John W. Little to continue its participation in this proceeding." Petitioners further stated, "Since mid-January,

[AT-N's and John W. Little's] total failure to authorize courses of actions, sign documentation, forward information or otherwise indicate that it wishes to proceed with its defense appears to be final. Counsel, therefore, is faced with what appears to be [AT-N's and John W. Little's] implied decision to not actively participate, either directly or by representation, in these proceedings." Based on this situation, Petitioners stated they were unable to forward required testimony and documentation and could not comply with the February 26, 2001 Order.

On April 2, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a Conditional Objection to Motion to Withdraw Appearance and Representation. In its conditional objection, the Consumer Advocate stated it was unable to assess the validity of counsel's claims in the motion to withdraw. The Consumer Advocate cited to an FCC order issued March 13, 2001, and stated The Helein Law Group, P.C. represented AT-N in the FCC proceeding "and possibly in other state proceedings concerning slamming complaints." The Consumer Advocate stated that "as verification of the grounds upon which the present motion is based, Counsel should be required to provide proof that they have requested and/or obtained permission to withdraw their appearance and representation of AT-N before the FCC and all other judicial or administrative forums in which counsel has represented or is representing AT-N and/or John W. Little." The Consumer Advocate further stated that "if counsel demonstrate that they have requested and/or obtained permission to withdraw their representation of America's Tele-network Corporation and John W. Little in all other forums, OCA will withdraw

its objection to counsel's motion." The Consumer Advocate attached a copy of the FCC Order to its conditional objection. The FCC Order states at page 13, paragraph 28 that a copy of the Order shall be sent to America's Tele-Network Corp. in care of Charles H. Helein and to AT-N's Georgia address, attention: John W. Little, President.

A telephone conference call regarding the motion, statement, and conditional objection was held on Thursday, April 5, 2001. Participating in the conference call were: Mr. Kirk Salzmänn, Mr. Charles Helein, and Ms. Loubna Haddad, all of the Helein Law Group, P.C., attorneys for AT-N, and Ms. Jennifer Easler, attorney for the Consumer Advocate. Mr. Salzmänn stated that Mr. Jacques Schira, co-counsel for AT-N, had an emergency and agreed that the conference call could proceed in his absence. Despite having been instructed to do so by the undersigned's secretary, the attorneys for AT-N made no attempt to have their client present on the conference call.

At the conference call, the attorneys for AT-N changed their position with regard to their client. Mr. Helein stated that his client was overwhelmed by the number of enforcement actions against it, was getting out of the residential long distance market, and was closing down its operations. He stated the company had no money, did not want to participate in this Iowa case, and had instructed its attorneys not to participate in this Iowa case. He stated the company had not marketed since October 2000 and would not operate in Iowa.

When asked whether he still represents AT-N before the FCC, Mr. Helein answered he had not filed a motion to withdraw his representation in the FCC case. He also stated he had represented AT-N in all states where there was some outstanding enforcement action, had settled the enforcement cases in all other states, and therefore did not need to file motions to withdraw in those states. He stated AT-N had settled the cases in the other states by agreeing not to operate in the states and refunding moneys owed to customers and changing them to new carriers. He stated in most states there are no outstanding proceedings. Mr. Helein has seen no indication that AT-N has hired other counsel. He also stated that AT-N had local counsel in Georgia, although the local counsel did not handle regulatory matters.

AT-N's attorneys provided AT-N's last known address, telephone number, fax number, and email address, and stated they believed AT-N was in the process of shutting down its offices in Georgia. They also clarified that they were relying only on subparagraph (d) of DR2-110(C)(1) to support their motion to withdraw.

Mr. Helein stated he could not participate in this action as an attorney because he had no records or information other than that already provided and his client would not cooperate to provide testimony. He stated his client had instructed him not to participate in this Iowa case, and under Virginia bar rules, he had an ethical obligation not to participate.

When asked when his client had told him not to participate in the Iowa action, Mr. Helein was vague, could not provide a specific date, and said it was prior to

sending the March 9, 2001 certified letter. He stated that due to the numerous enforcement actions, it had become impossible for AT-N to do anything other than cease operating, and it was no longer possible for AT-N to pursue a defense in this case.

At the conference call, the Consumer Advocate expressed the concern that AT-N's counsel's withdrawal from representation in this case is selective and counsel continues to represent AT-N in other jurisdictions. The Consumer Advocate also stated there is nothing in the record to substantiate the statements made by counsel. Ms. Easler stated there is nothing in the record showing that AT-N has withdrawn from doing business in Iowa and nothing regarding AT-N's financial situation. She pointed out that until recently AT-N had requested the ability to conduct discovery, and now counsel has stated that AT-N has changed its mind. She questioned whether AT-N had authorized the answer brief filed by AT-N January 22, 2001.

There is nothing in the record to support any of the statements made during the telephone conference call by AT-N's attorneys other than the FCC order issued March 13, 2001 against AT-N, and the letter AT-N's attorneys wrote to AT-N on March 9, 2001. Given that additional information is needed and AT-N's attorneys have changed their position since filing the motion to withdraw, AT-N's attorneys must file a statement and amend their motion to withdraw to conform to the statements made during the April 5, 2001 conference call.

The statement must include a recitation of all the statements made in the telephone conference call, including statements regarding AT-N's current business

operations and financial position, all jurisdictions where AT-N's counsel has represented AT-N and the current status of all such actions and counsel's representation of AT-N in those jurisdictions, AT-N's directions to counsel and when they occurred, and details of all efforts made by counsel to contact AT-N. It must include when AT-N and its counsel last had contact. It must include whether AT-N's attorneys have filed motions to withdraw in other jurisdictions, and if not, why not. It must address the Consumer Advocate's concern that the motion to withdraw appears to be selective as to this Iowa case. The statement must include AT-N's address, telephone number, fax number, email address, and correct contact person. It must include how Mr. Helein contacts AT-N with regard to the FCC case. If AT-N has shut down its Roswell, Georgia office, it must include a current address for AT-N or Mr. John W. Little. It must include a list of all documents in this case AT-N's lawyers know AT-N has received to date. It must include the name, address, telephone number, fax number, and email address of AT-N's local counsel in Georgia with a recitation of the limits of the Georgia counsel's representation. It must clarify that counsel is relying only on subparagraph (d) of DR2-110(C)(1) for withdrawal. It must include a copy of the return receipt card attached to counsel's March 9, 2001 letter signed by AT-N as having received the letter. The statement must include evidence to support the statements made by counsel.

Further, AT-N's attorneys must file an amendment to their motion to withdraw to conform it to the statements made by counsel in the April 5, 2001 conference call.

Regardless of whether or not the motion to withdraw is granted, the procedural schedule and hearing date established in the February 26, 2001 Order remain in effect, AT-N is bound to comply with the Order, and no further continuances will be granted. AT-N is currently in default of the requirements to re-file its answers to questions (separated prefiled testimony and brief) and file its telecommunications service provider registration by March 26, 2001.

As stated in the February 26, 2001 Order, the hearing in this case will be held beginning at 10 a.m. Tuesday, June 12, 2001, in the Board hearing room, 350 Maple Street, Des Moines, Iowa.

The parties are advised that Iowa Code § 17A.12(3)(2001) provides that "If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party." AT-N's counsel was properly served with notice of the hearing, counsel represented AT-N at the time of service, and therefore AT-N was properly served with notice of the hearing.

**IT IS THEREFORE ORDERED:**

1. AT-N's counsel must file its statement with supporting evidence and amended motion to withdraw by April 20, 2001.
2. The Consumer Advocate must file its response by May 2, 2001.
3. After receipt of the above, the undersigned will issue an Order ruling on the motion to withdraw.



4. The procedural schedule and hearing date contained in the February 26, 2001 Order remain in effect.

5. The remaining ordering clauses contained in the Board Order issued November 20, 2000 and the Order issued February 26, 2001 remain in effect.

**UTILITIES BOARD**

/s/ Amy L. Christensen

Amy L. Christensen

Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper

Acting Executive Secretary

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of April, 2001.